

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-919V

Filed: July 25, 2011

Unpublished

CHRISTINA BELL, parent of
BRITTNEY LECLAIR, a minor,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Stipulation; Human papillomavirus vaccine, HPV; Tetanus-diphtheria-acellular pertussis, Tdap; Acute disseminated encephalomyelitis, ADEM; Transverse myelitis, TM

Ronald Craig Homer, Conway, Homer & Chin-Caplan, P.C., Boston, M.A., for Petitioner.
Debra A. Filteau Begly, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION¹

GOLKIEWICZ, Special Master.

On July 25, 2011, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner alleges that her daughter suffered acute disseminated encephalomyelitis, ADEM, and/or transverse myelitis, TM, as a consequence of the HPV and Tdap vaccines she received on August 13, 2007. Petitioner further alleges that her daughter experienced the residual effects of the injury for more than six months. Respondent denies that petitioner's daughter developed ADEM and/or TM caused-in-fact by the vaccines she received and further denies that petitioner's daughter suffered residual effected of a vaccine-related injury for more than six months. Nonetheless, the parties agreed informally to resolve this matter. Stipulation, filed July 25, 2011.

¹ The undersigned intends to post this decision on the website for the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). **As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the entire decision will be available to the public. Id. Any motion for redaction must be filed by no later than fourteen (14) days after filing date of this filing. Further, consistent with the statutory requirement, a motion for redaction must include a proposed redacted decision, order, ruling, etc.**

The court hereby **ADOPTS** the parties' said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. **Specifically, petitioner is awarded a lump sum of \$150,000.00 in the form of a check payable to petitioner as guardian/conservator of the estate of petitioner's daughter; petitioner is also awarded a lump sum of \$31,167.97 in the form of a check payable jointly to petitioner as guardian/conservator of her daughter's estate and Agency for Health Care Administration, ACS Recovery Services, PO Box 12188, Tallahassee, FL 32317-2188, Attn: Mark E. Lyles. See Stipulation, ¶ 8, filed July 25, 2011.**

The Clerk of the Court is directed to enter judgment accordingly.

IT IS SO ORDERED.²

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Special Master

² This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision. Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
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**SECRETARY OF HEALTH AND
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No. 08-919V
SPECIAL MASTER
GARY J. GOLKIEWICZ

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her daughter, Brittney LeClair (“Brittney”), petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34 (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to Brittney’s receipt of the Human Papillomavirus (“HPV”) and Tetanus – diphtheria – acellular pertussis (“Tdap”) vaccines, which vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Brittney received her immunizations on August 13, 2007.
3. These vaccines were administered within the United States.
4. Petitioner alleges that Brittney developed acute disseminated encephalomyelitis (“ADEM”) and/or transverse myelitis (“TM”), or any other injury as a result of her vaccinations. She further alleges that the residual effects of this injury have persisted for more than six months.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Brittney as a result of her condition.

6. Respondent denies that Brittney developed ADEM and/or TM as a result of her vaccinations or that she has suffered residual effects of a vaccine-related injury for more than six months.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum of \$150,000.00 in the form of a check payable to petitioner as guardian/conservator of Brittney's estate. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and
- b. A lump sum of \$31,167.97 in the form of a check payable jointly to petitioner as guardian/conservator of Brittney's estate and

Agency for Health Care Administration
ACS Recovery Services
P.O. Box 12188
Tallahassee, Florida 32317-2188
Attn: Mark E. Lyles

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation, will be used solely for the benefit of Brittney as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Brittney's estate under the laws of the State of Florida. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Brittney's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Brittney LeClair at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of Brittney LeClair upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of Brittney on behalf of herself, Brittney, and her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of Brittney resulting from, or alleged to have resulted from, the Tdap and HPV vaccinations administered on August 13, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about December 24, 2008, in the United States Court of Federal Claims as petition No. 08-919V.

15. If Brittney should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

16. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

17. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly

Respectfully submitted,

PETITIONER:

Christina Bell
CHRISTINA BELL

**ATTORNEY OF RECORD FOR
PETITIONER:**

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Rule 83.1(c)(2)
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Dated: 7/25/11